

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35344

STATE OF IDAHO,)	2009 Unpublished Opinion No. 465
)	
Plaintiff-Respondent,)	Filed: May 14, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
ADAM KENNETH JACKSON,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge. Hon. Eugene A. Marano, Magistrate.

Order of the district court affirming the judgment of conviction of the magistrate court, affirmed.

Adam Kenneth Jackson, Coeur d'Alene, appellant pro se.

Hon. Lawrence G. Wasden, Attorney General; Ann Wilkinson, Deputy Attorney General, Boise, for respondent.

GRATTON, Judge

Adam Kenneth Jackson appeals, pro se, from his conviction for driving without privileges, Idaho Code § 18-8001, and failing to provide proof of insurance (second offense), I.C. § 49-1232. We affirm the district court's appellate decision dismissing Jackson's second appeal.

I.

FACTS AND PROCEDURAL BACKGROUND

Following a traffic stop, Jackson was charged with driving without privileges and failing to provide proof of insurance, a second offense. Prior to trial, Jackson moved to suppress alleging that the traffic stop was without probable cause or reasonable suspicion. The magistrate denied the motion as untimely. Jackson also filed a motion to dismiss which was denied. Following a bench trial, Jackson was found guilty as charged. For driving without privileges, the magistrate imposed a sentence of 180 days in jail with 175 suspended, a \$1000 fine with \$750

suspended and two years probation. For failure to provide evidence of insurance, Jackson was sentenced to 180 days in jail all of which was suspended, a \$1000 fine with \$900 suspended and two years probation.

Jackson appealed to the district court challenging the denial of the motion to suppress. After the State acknowledged that the motion had been timely filed, the district court remanded for a hearing on the motion and ordered re-entry of the conviction if the motion was denied, or a new trial, if granted. Jackson filed motions to disqualify the magistrate which were denied. Following a hearing, the magistrate again denied the motion to suppress. Jackson appealed to the district court which affirmed the magistrate. This appeal followed.

II.

ANALYSIS

Jackson raises the following issues on appeal: (A) improper denial of motion to disqualify; (B) improper refusal to allow examination of witness as a hostile witness and to allow impeachment with prior inconsistent statement; (C) failure to exhaust administrative remedies, by not first proceeding before the Idaho Department of Transportation (ITD) on the failure to provide evidence of insurance, as that agency has primary jurisdiction; (D) ITD's failure to promulgate substantive regulations renders I.C. § 49-1232 unenforceable; and (E) I.C. § 18-8001 and I.C. § 49-1232 were enacted without enabling clauses and are thus unenforceable.

On review of a decision of the district court, rendered in its appellate capacity, we review the decision of the district court directly. *State v. DeWitt*, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008). We examine the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. *Id.* If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure. *Id.*

A. Motion to disqualify.

On May 8, 2006 Jackson filed an objection to magistrate hearing case. On May 24, 2006, Jackson filed a motion to disqualify Magistrate Patrick McFadden on the grounds of bias. On July 31, 2006 Jackson filed a peremptory motion to recuse Magistrate Eugene Marano, which was denied. Jackson's first appeal raised only the issue of the denial of the motion to suppress. The appeal was heard on February 22, 2007. On March 12, 2007 Jackson filed a second

peremptory motion to recuse Magistrate Eugene Marano and a separate motion to disqualify for cause. The district court issued its appellate order on March 30, 2007. The magistrate denied the peremptory motion to recuse on April 18, 2007. The magistrate conducted a hearing on the motion to suppress on June 1, 2007, and denied the motion. At that hearing, the court also reiterated the denial of the motions for disqualification. The second appeal to the district court was filed on June 1, 2007, and an amended notice of appeal was filed June 28, 2007. A statement of preliminary issues on appeal was filed on July 31, 2007. A second amended notice of appeal and designation of record was filed on August 28, 2007.

The second appeal was argued April 16, 2008.¹ As an initial matter, the district court held that any issues not raised in the initial notice of appeal, i.e., appeal “from the final order of judgment, in other words, the sentence” and the order denying the motion to suppress, were not properly raised. The district court held that the issues to be brought on appeal were to be stated in the notice of appeal or in a separately filed statement of issues filed within fourteen days of the date of filing of the notice of appeal. Idaho Criminal Rule 54.4(i). The district court held that, since the amended notices of appeal did not raise new issues and were not filed within fourteen days of the notice of appeal, the appeal was limited to the issues set forth in the initial notice. Alternatively, in regard to the motion to disqualify, the district court held that the motion had been prematurely filed on March 12, 2007, since the district court retained jurisdiction until decision on the first appeal on March 30, 2007. The district court also ruled that the motion did not comport with Rule 25, because a new trial had not been ordered. *See* I.C.R. 25(a)(5).

Pursuant to I.C.R. 25(b)(4), a motion to disqualify a judge in a criminal case may be made on the ground that the judge “is biased or prejudiced for or against any party or that party’s case in the action.” The disposition of such a motion is within the discretion of the trial court. *Sivak v. State*, 112 Idaho 197, 206, 731 P.2d 192, 201 (1986); *State v. Saunders*, 124 Idaho 334, 336, 859 P.2d 370, 372 (Ct. App. 1993). A motion for disqualification should be granted “only where there is actual prejudice against the litigant of such a nature as to render it improbable that the presiding judge could or would give the litigant a fair and impartial trial.” *State v. Elliott*,

¹ Jackson’s briefs on this appeal argue only the denial of the motion for disqualification for cause under Idaho Criminal Rule 25, not the peremptory motion to recuse. While Jackson argued for disqualification under I.C.R. 25(a)(1) and (5) as well as (b)(4) below, the briefs on appeal only argue I.C.R. 25(b)(4) as the basis for disqualification on appeal. We will analyze the issue accordingly.

126 Idaho 323, 329, 882 P.2d 978, 984 (Ct. App. 1994). *See also State v. Pizzuto*, 119 Idaho 742, 776, 810 P.2d 680, 714 (1991), *overruled on other grounds by State v. Card*, 121 Idaho 425, 432, 825 P.2d 1081, 1088 (1991); *State v. Waterman*, 36 Idaho 259, 210 P. 208 (1922). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989).

We have thoroughly reviewed the record and transcripts in this matter and conclude that we need not determine any issues regarding the procedural propriety of Jackson's disqualification motions. Jackson's motion to disqualify on the ground of bias, pursuant to Rule 25(b)(4), is wholly without merit. Jackson claimed bias because (1) the magistrate failed to attend a pretrial hearing and might do so again; (2) the magistrate was belligerent to Jackson and did not allow him sufficient time to argue his motion to dismiss; and (3) the magistrate was generally biased, presumably evidenced by adverse rulings on pretrial motions. These allegations are affirmatively disproved by the record and do not support a finding of bias.

First, the record is devoid of evidence of the magistrate "intentionally" failing or refusing to attend a properly scheduled pretrial hearing. On June 20, 2006, Jackson filed certain motions and included a notice of hearing for July 12, 2006, the date of a previously scheduled pretrial conference. However, Jackson apparently never contacted the court to schedule the hearing on the motions. On July 12, 2006, the parties met for pretrial conference but no judge was present. The clerk was notified of the conference. A hearing on the motions was rescheduled for and held on July 31, 2006, even though the State was not properly served. Jackson has failed to allege and we find no evidence that any motion, entitled to a hearing, was not heard. The magistrate is charged and empowered with control of the conduct of proceedings before it. I.C. § 1-1603(3); Local Rules for the District Court of the First Judicial District, Rules 2 (scheduling) and 3 (calendar). Jackson's failure to follow the proper procedures for noticing a hearing caused delay in the hearing to July 31, 2006. This claim of bias is not supported by the record.

Second, we have reviewed the transcripts of all hearings regarding the claim of belligerence and failure to allow sufficient time to argue the motion regarding affirmative

defenses, i.e., motion to dismiss. A criminal defendant proceeding pro se must follow the court's substantive and procedural rules. *State v. Dalrymple*, 144 Idaho 628, 636, 167 P.3d 765, 773 (2007). As set forth above, the magistrate is empowered to control the conduct of proceedings before it. Requiring compliance with argument and hearing procedure does not implicate bias. On numerous occasions throughout the record, the magistrate reminded Jackson that proper order required that Jackson speak only in turn. He was also told that he would not be allowed to reargue matters already submitted. The court's insistence upon orderly presentation does not implicate bias. In specific regard to the motion to dismiss, the court indicated that it had read the detailed memorandum submitted by Jackson and asked if Jackson had any evidence to submit in support of the motion. Jackson indicated that he did not have any evidence to submit, whereupon the court denied the motion as lacking a legal basis. While Jackson indicated that he wanted to "talk the matter through," the court disallowed further argument. Additional argument on the motion was unnecessary. As the magistrate and district courts concluded, we too conclude, as set forth below, that the motion was without merit. The magistrate properly inquired as to whether there was additional record to make, but was not required to allow additional argument on a meritless motion.

Third, Jackson claims general bias, which we presume to flow from adverse rulings made by the magistrate. The fact that a trial court makes rulings that a party does not like is not, in and of itself, evidence of impermissible bias. *State v. Griffith*, 144 Idaho 356, 361, 161 P.3d 675, 680 (Ct. App. 2007). A disqualifying prejudice cannot be deduced from adverse rulings by a judge, whether they are right or wrong. *Desfosses v. Desfosses*, 120 Idaho 27, 30, 813 P.2d 366, 369 (Ct. App. 1991).

Lastly, Jackson claims that the district court acted outside Rule 25 by deciding the motion to disqualify without a hearing. However, in *State v. Pratt*, 128 Idaho 207, 210, 912, P.2d 94, 97 (1996), the defendant contended that the trial judge erred by denying his motion to disqualify without first conducting an evidentiary hearing. The Court held that when a court is faced with a motion to disqualify for bias or prejudice under I.C.R. 25 or Idaho Rule of Civil Procedure 40(d)(2), "the trial judge need only conclude that he can properly perform the legal analysis which the law requires of him." *Id.* (citing *Beam*, 115 Idaho at 215, 766 P.2d at 685). This decision is committed to the trial court's discretion and there exists no requirement that the court's determination must be preceded by an evidentiary hearing. *Id.*

The district court did not abuse its discretion in denying the motion to disqualify.

B. Evidentiary Issues.

Jackson contends that, with respect to the motion to suppress, the State should not have been allowed to put on its evidence first. He claims that, by allowing the State to proceed first, he was denied due process and equal protection rights² because he was then confined in cross-examination to the scope of direct examination. Further, he claims he should have been allowed to examine the arresting officer as a hostile witness. Jackson did not preserve an objection as to the order of proof. Generally, issues not raised below will not be considered for the first time on appeal. *State v. Fodge*, 121 Idaho 192, 195, 824 P.2d 123, 126 (1992). The magistrate ruled that the arresting officer was an adverse witness but not a hostile witness. Jackson claims that he was confined to cross-examination within the scope of direct examination. However, Jackson has alleged no testimony that he wished to elicit from the officer which the district court disallowed. Jackson did not request to exceed the scope of direct. Jackson asked the officer a total of two questions and the magistrate asked two clarifying questions. No objections were interposed. During the bench trial conducted in 2006, the State called and examined the arresting officer and Jackson cross-examined the officer. Thereafter, Jackson requested that the officer remain in the courtroom in the event Jackson wished to recall him. At the subsequent hearing on the motion to suppress, Jackson did not make a similar request. The magistrate did not abuse its discretion.

Jackson also claims that he was denied due process and equal protection rights regarding impeachment of the arresting officer.³ Prior to the suppression motion hearing, the State asked the magistrate to take judicial notice of the testimony at trial. Upon Jackson's objection, the magistrate denied the motion. After the officer testified, Jackson took the stand and attempted to bring up the officer's testimony from the trial. The court indicated that it would not take notice of the prior testimony. Jackson then testified to his own version of the events, contrary to the officer's testimony. As noted, Jackson did not request that the officer remain so that he could be recalled. He could have attempted to impeach the officer directly but chose not to do so.

² Jackson presents no authority as to the due process or equal protection violation claims. A party waives an issue on appeal if either authority or argument is lacking. *State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). We consider the issue under the abuse of discretion standard for admission of testimony.

³ As above, we review this claim only under the evidentiary abuse of discretion standard.

Jackson was allowed to state his contrary version, but, having objected to judicial notice of the trial testimony, could not properly testify as to his recollection of that testimony in an effort to impeach the officer. The magistrate did not abuse its discretion.

C. Failure to exhaust administrative remedies.

Jackson claims that ITD has primary jurisdiction to enforce I.C. § 49-1232 and, therefore, the charge of failure to provide proof of insurance should be dismissed due to failure to exhaust administrative remedies. Idaho Code § 49-1232(3) specifically provides for criminal prosecution for failure to provide proof of insurance. While certain provisions of Title 49, Chapter 12, Idaho Code are administratively enforced by ITD, criminal sanctions are enforced in the courts. Failure to provide proof of insurance has been determined to be a separate criminal offense. *State v. Longstreet*, 130 Idaho 202, 203, 938 P.2d 1240, 1241 (Ct. App. 1984). Criminalization of violation of the requirement of carrying proof of insurance is a legitimate police power. *State v. Reed*, 107 Idaho 162, 172, 686 P.2d 842, 852 (Ct. App. 1984). The State was not required to exhaust administrative remedies prior to this criminal enforcement.

D. Lack of enforcement regulations.

Jackson claims that I.C. § 49-1232 lacks substantive enforcement regulations promulgated by ITD. For the reasons set forth in section C, above, this claim is without merit.

E. Statutory lack of enacting clauses.

Jackson claims that I.C. § 18-8001 and I.C. § 49-1232 “contain no published enacting clause as mandated by Idaho Constitution, Article III, Section 1.” Jackson misreads the law. Article III, Section 1 of the Idaho Constitution provides that every “bill” enacted by the legislature requires an enacting clause. This Constitutional provision does not require a published enacting clause for “statutes” codified in the Idaho Code. Each of the bills adding these statutes contained an enacting clause. 1984 Idaho Sess. Laws, ch. 22, § 2 at 25 (adding I.C. § 18-8001); 1999 Idaho Sess. Laws, ch. 383, § 9 at 1051 (adding I.C. § 49-1232).

III.

CONCLUSION

The record affirmatively disproves Jackson’s assertion of a bias of the magistrate sufficient for disqualification for cause under Rule 25(b)(4). The district court did not abuse its discretion in regard to testimony received and excluded at the suppression hearing. The State was not required to exhaust administrative remedies prior to criminal enforcement of I.C. § 49-

1232, and as such, the existence or lack of existence of administrative enforcement regulations is of no consequence. Idaho Code § 18-8001 and I.C. § 49-1232 were properly enacted under Article III, Section 1 of the Idaho Constitution relating to enacting clauses. Therefore, Jackson's judgment of conviction is affirmed.

Chief Judge LANSING and Judge GUTIERREZ, **CONCUR.**